

Patents

Trade-Marks : Labels

"How to Get Them"



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this book is published for YOU.
The exact quotations from de-
cisions of the courts following
the various subjects have been
selected, with great care, after
much labor, to find those laying
down the correct rule of law, in
such language as to make it
clear to the layman. These
quotations alone, regardless of
who your attorney may be, will
well pay you for reading this
book from cover to cover.

Introduction

I AM a member of the bar of all courts of record in three States; United States District Court, United States Circuit Court of Appeals; Supreme Court and Court of Appeals of the District of Columbia; and the Supreme Court of the United States; and admitted to practice before all departments of the government and the various bureaus thereof.

I carry on a general law practice in all of said courts, specializing in patent, trade-mark, unfair trade competition, corporation and copyright causes, and will try cases outright or act as associate attorney for other attorneys in such cases.

I will also try cases outright or act as associate attorney for other attorneys before the Supreme Court of the United States in all classes of litigation.

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Correspondence

ALL correspondence with me is held in strict confidence and no letters are ever answered by an imitation type-written form letter, but each and every letter of inquiry on any subject relating to Patents; Trade-Marks; Labels; Copyrights; Infringements; Unfair Trade Competition; Title, Validity or Infringement Searches; Corporations; or other matters, receives a personal answer, as I believe that "if a thing is worth doing at all, it is worth doing well," and I wish you to feel at liberty to call or write for any further information desired.

Selecting an Attorney

AN inventor who attempts to prosecute his own case is met with objections to the form of his specification and claims, inaccurate drawings and other informalities and if he finally succeeds in securing the allowance of his patent, the claims are usually so drawn that they afford little or no protection.¹

Employ in the first instance a competent lawyer who makes a specialty of patent law, with a wide experience in such litigation, which enables him to so prepare and prosecute your case that it will stand the test of the Courts.²

In addition to my own vast experience, I have in my employ a corps of experienced, skillful patent lawyers and mechanical experts. This entire organization is at your service without any additional expense and places me in a position to render you the very best service there is to be had at any price—and my fees are reasonable.

Since my admission to the bar in 1896, I have had more experience and handled a greater number and variety of cases than most lawyers do in a lifetime.

Give me a trial and you will become my permanent client.

1. An applicant or an assignee of the entire interest may prosecute his own case, but he is advised, unless familiar with such matters, to employ a competent patent attorney, as the value of patents depends largely upon the skilful preparation of the specification and claims. The office cannot aid in the selection of an attorney. United States Patent Office—Rule 17.

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2. The specification and claims of a patent, particularly if the invention be at all complicated, constitute one of the most difficult legal instruments to draw with accuracy, and in view of the fact that valuable inventions are often placed in the hands of inexperienced persons to prepare such specifications and claims, it is no matter of surprise that the latter frequently fail to describe with requisite certainty the exact invention of the patentee, and err either in claiming that which the patentee had not in fact invented, or in omitting some element which was a valuable or essential part of his actual invention. *Topliff v. Topliff et al.*, 145 U. S. 156.

If he shows that the patentee has failed in any of those prerequisites on which the authority to issue the patent is made to depend, his defense is complete. *Grant v. Raymond*, 31 U. S. 218.

If the application as amended were to be construed as embodying such an invention as is now claimed, it was another and different invention from that for which the patent was originally sought, and, if an amendment having the consequence was permissible, it should have been verified by the oath of the inventor. *American Lava Co. et al. v. Steward et al.*, 155 F. R. 731.

A patentee by his claim as to what he regards as new, by necessary implication disclaims the rest as old, and such remaining parts are to be regarded as old or common and public. *The Corn-Planter Patent*, 90 U. S. 181.

The amendments made were not mere amplifications of what had been in the application before; the patent was granted upon them without any new oath by the administratrix; and this defense is not required by statute to be specifically set forth in the answer, and can be availed of under the issues raised by the pleadings, as showing that the plaintiff has no valid patent. *Eagleton Mfg. Co. v. West Bradley & Carey Mfg. Co.* et al., 111 U. S. 490.

The rejection of a claim in an application for a patent, and its subsequent modification by the applicant, and his acceptance of a patent on the amended claim, amount to a disclaimer as to the matter eliminated. *Michaelis v. Larkin*, 91 F. R. 778.

Washington, D. C., Offices

My Washington, D. C., offices are located right opposite the United States Patent Office, where personal interviews are had daily with the officials in charge of my cases. A few minutes explanation or argument with the official in charge of a case will frequently accomplish more than months of correspondence.

Conditions often arise requiring the personal attendance of an attorney at Washington.

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Those employing an attorney without a Washington office are thus put to considerable extra expense in sending their attorney to Washington, all of which may be avoided by employing a Washington attorney in the first instance.

Chicago and Philadelphia Offices

I also have offices in the great commercial centers of Chicago and Philadelphia, which keeps me in personal touch with thousands of business men, manufacturers and inventors, and enables them to call at my offices for personal interviews and at the same time have the advantage of having a Washington attorney. Those located in the middle and western states can thus save much time by doing business through my Chicago offices, while those located in Pennsylvania and the eastern states can get in personal touch with my Philadelphia offices. No matter where you are located, I can handle your business with equal success. Call or write my nearest office.

Patents

Who Is Entitled to a Patent

ANY person, citizen or alien, including minors and women, who has invented³ or discovered⁴ any new and useful art, machine, manufacture, composition of matter, or any new and useful improvements thereof, not

Who Is Entitled to a Patent—Continued

known or used by others in this country, before his or her invention or discovery thereof, and not patented or described in any printed publication in this or any foreign country,⁵ before his or her invention or discovery thereof, or more than two years prior to the date of application, and not in public use or on sale in this country for more than two years prior to the date of application,⁶ may obtain a patent therefor.

In the event of the death of the inventor the patent may be procured by his legal representatives.⁷

Persons purchasing an interest in an invention may secure their interest in the patent by means of an assignment executed by the inventor, but they must not join in the application.⁸

The application must be made by the real inventor, or inventors, if living, or the patent will be void.⁹

3. Invention, in the nature of improvements, is the double mental act of discerning, in existing machines, or processes, or articles, some deficiency, and pointing out the means of overcoming it. General Electric Co. v. Sangamo Electric Co., 174 F. R. 246.

Indeed, it often requires as acute a perception of the relation between cause and effect, and as much of the peculiar intuitive genius which is a characteristic of great inventors, to grasp the idea that a device used in one art may be made available in another, as would be necessary to create the device *de novo*. And this is not the less true if, after the thing has been done, it appears to the ordinary mind so simple as to excite wonder that it was not thought of before.

The apparent simplicity of a new device often leads an inexperienced person to think that it would have occurred to anyone familiar with the subject; but the decisive answer is that with dozens and perhaps hundreds of others laboring in the same field, it had never occurred to anyone before. The practiced eye of an ordinary mechanic may be safely trusted to see what

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ought to be apparent to everyone. Potts v. Creager, 155 U. S. 597.

Where the question of novelty is in doubt, the fact that the device has gone into general use, and displaced other devices employed for a similar purpose, is sufficient to turn the scale in favor of the invention. Magowam v. New York Belting Co., 141 U. S. 332.

The settled rule of law is, that whoever first perfects a machine is entitled to the patent, and is the real inventor, although others may have previously had the idea and made some experiments towards putting it into practice. Agawam Co. v. Jordan, 74 U. S. 583.

4. A new process is usually the result of a discovery; a machine of invention. The arts of tanning, dyeing, making water-proof cloth, vulcanizing india-rubber, smelting ores, and numerous others, are usually carried on by processes as distinguished from machines. Tilghman v. Proctor, 102 U. S. 707.

5. A previous discovery in a foreign country does not render a patent here void, unless such discovery, or some substantial part of it, had been before patented or described in a printed publication. O'Reilly et al. v. Morse et al., 56 U. S. 62.

6. The evident intention of Congress was to take away the right to obtain a patent after an invention had for a long period of time been in public use without the consent or allowance of the inventor; it limited that period to two years, whether the inventor had or had not consented to or allowed the public use. Andrews v. Hovey, 123 U. S. 267.

7. The patent law makes it essential to the validity of a patent, that it shall be granted on the application, supported by the oath, of the original and first inventor (or of his executor or administrator), whether the patent is issued to him or to his assignee. A patent which is not supported by the oath of the inventor, but applied for by one who is not the inventor, is unauthorized by law, and void, and, whether taken out in the name of the applicant or of any assignee of his, confers no rights as against the public. Kennedy v. Hazelton, 128 U. S. 667.

8. A joint patent is invalid as to a feature previously invented by one of the patentees, and which is not a necessary part of the device jointly invented. Heulings v. Reid, 58 F. R. 868.

9. So far as the patentee of it is concerned, the validity of his patent fails, because he was not the inventor, and was not entitled to the patent. Hartshorn v. Saginaw Barrel Co., 119 U. S. 664.

No one is entitled to a patent for that which he did not invent, unless he can show a legal title to the same from the inventor or by operation of law. Agawam Co. v. Jordan, 74 U. S. 583.

The proofs in this regard are conclusive; that the patentee is not the original and first inventor of the patented improvement . . . and it is clear that the original patentee was not entitled to a patent either for the paper or the process, as he never made any invention or discovery upon the subject. Collar Co. v. Van Dusen, 90 U. S. 530.

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Employer and Employee

An employer is not entitled to the invention of the employee and cannot compel an assignment of a patent secured by such employee, in the absence of an express agreement to that effect, even though the employee may have used the employer's time and material in perfecting the invention,¹⁰ but if the employee introduces the invention into the business of his employer, without any agreement as to the employer's right to use it, the Courts hold that he has, by his conduct, granted the employer an implied shop license which he cannot revoke, even after leaving the employment.¹¹ Such implied license, however, is not assignable without the consent of the inventor.¹²

When an inventor, who has conceived the general idea and plan of an invention, employs a skilled mechanic to perfect the mechanical details, the employer with the original idea and plan is the true inventor, even though the employee has added patentable features to the original plan.¹³

10. A manufacturing corporation which has employed a skilled workman, for a stated compensation, to take charge of its works, and to devote his time and services to devising and making improvements in articles there manufactured, is not entitled to a conveyance of patents obtained for inventions made by him while so employed, in the absence of express agreement to that effect. Daizell v. Dueber Watch Case Mfg. Co., 149 U. S. 315.

The rule may be stated in a few words. No matter what the contract of service may be—whether for ordinary employment or for specific inventive work—the master cannot have title to an invention of a servant, in the absence of an express contract to assign it to him, although made in the course of the service and at the master's expense. Stray statements which seem to point to the master's right of owner-

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ship are to be found in some opinions, but these decisions cannot stand as authorities against the main body of cases from which the above rule is gathered. National Wire Bound Box Co. et al. v. Healy, 189 F. R. 49.

One who is the first discoverer of a process is entitled to a patent therefor, even against one in whose employ he was at the time of the discovery, and at whose request and expense he was making experiments which led to the discovery. Damon v. Eastwick, 14 F. R. 40.

11. In Whiting v. Graves, 3 Ban. & A. 222, it was held that an employment to invent machinery for use in a particular factory, would operate as a license to the employer to use the machinery invented, but would not confer on the employer any legal title to the invention or to a patent for it. Hapgood v. Hewitt, 119 U. S. 226.

According to that rule, an implied license, if it relates to an improvement in the process, ordinarily authorizes the employer to continue to practice the process during the whole period of the patent. This follows because the subject matter is indivisible; but, if the invention pertains to a machine, it is understood, ordinarily, that only the specific machine or machines which have been set up during the time of the employment are protected. City of Boston v. Allen, 91 F. R. 248.

12. Whatever license resulted to the Missouri corporation, from the facts of the case, to use the invention, was one confined to that corporation, and not assignable by it. Hapgood v. Hewitt, 119 U. S. 226.

The non-assignability of a license may be waived if the patentee ratifies the transfer of the license, by otherwise treating the assignee as the licensee was entitled to be treated. Lane & Bodley Co. v. Locke, 150 U. S. 193.

If Stiebel could be held to have had an implied license to make and use the invented article, such license was limited exclusively to him, and did not pass by the administrator's sale to the defendant as his assignee. Kraatz et al. v. Tieman, 79 F. R. 322.

A license to use a patented invention that does not contain words importing assignability is a grant of a mere personal right to the licensee which does not pass to his heirs or representatives and which cannot be transferred to another without the expressed consent of the licensor. Bowers v. Lake Superior Contracting & Dredging Co., 149 F. R. 983.

13. Where a person has discovered an improved principle in a machine, manufacture, or composition of matter, and employs other persons to assist him in carrying out that principle, and they, in the course of experiments arising from that employment, make valuable discoveries ancillary to the plan and preconceived design of the employer, such suggested improvements are in general to be regarded as the property of the party who discovered the original improved principle, and may be embodied in his patent as a part of his invention. Agawam Company v. Jordan, 74 U. S. 583.

An allegation that a design was invented by the patentee's draughtsman, and not by the patentee, is

Employer and Employee—Continued

not sustained where it appears that the patentee conceived the idea and manner of carrying it out, although the draughtsman applied the idea and made the drawing. Smith v. Stewart et al., 55 F. R. 481.

What May Be Patented

Patents may be granted for any new or useful improvement in any machine, art, manufacture or process; ornamental designs for machines, articles of trade, carpets, wall papers, silks, dress patterns, fancy initials, fancy fabrics of all kinds, cut glass ornamentations, decorations for dishes, statuary, medals, emblems, jewelry, picture frames, furniture and for every other new distinctive and ornamental design; medicinal compounds if constituting more than a mere physician's prescription; and other new compositions of matter.¹⁴

14. That a patent can be granted for a process there can be no doubt. The patent law is not confined to new machines and new compositions of matter, but extends to any new and useful art or manufacture. A manufacturing process is clearly an art, within the meaning of the law. Tilghman v. Proctor, 102 U. S. 707.

Such an invention is without the field of mechanical contrivance. It consists in the new application of a power of nature, by which new application a new and useful result is attained. There is no new product, but an old product—water—is obtained from the earth in a new and advantageous manner. Eames v. Andrews, 122 U. S. 40.

In Sewall v. Jones it was held that there might be a patent for the process and one for the product.

It is settled also that an inventor may make a new improvement on his own invention of a patentable character, for which he may obtain a separate patent. Miller v. Eagle Manufacturing Co., 151 U. S. 186.

While none of the elements of the Beach patent—taken separately or perhaps even in a somewhat similar combination—was new, their adaptation to this new use and the minor changes required for that purpose resulted in the establishment of practically a new industry, and was a decided step in advance of any that had theretofore been made.

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With all the anticipating devices before us, it is apparent that the mere change in the shape of the dies was a minor part of the work involved in so changing the Dennis and York machine as to make it perform a wholly different function, the invention consisting rather in the idea that such change could be made, than in making the necessary mechanical alterations. Hobbs v. Beach, 180 U. S. 383.

The use of one material, instead of another, in the construction of a known article or machine, amounts to invention, where the substitution accomplishes a new and useful result, an increase of efficiency, and a saving in operation, and renders the article for the first time successful and satisfactory in operation. George Frost Co. et al. v. Cohn et al., 112 F. R. 1009.

Not only did they discard the glass bars, and substitute others of steel, but they substituted them for a purpose wholly different from that for which they had been employed. Under such circumstances, we have repeatedly held that a change of material was invention.

As we said in Smith v. Goodyear Dental Vulcanite Co., 93 U. S. 486, and Magowan v. New York Belting Co., 141 U. S. 332, 343, where the question of novelty is in doubt, the fact that the device has gone into general use, and displaced other devices employed for a similar purpose, is sufficient to turn the scale in favor of the invention. Potts v. Creager, 155 U. S. 597.

When the question is, whether a thing can be done or not, it is always easy to find persons ready to show how not to do it. But it stands confessed that the thing has been done, that is to say, the contrivance which Webster claims in his patent has been applied, and very successfully so, to pile fabric looms.

It may have been under their very eyes, they may almost be said to have stumbled over it; but they certainly failed to see it, to estimate its value, and to bring it into notice. Now that it has succeeded, it may seem very plain to anyone that he could have done it as well. This is often the case with inventions of the greatest merit. It may be laid down as a general rule, though perhaps not an invariable one, that if a new combination and arrangement of known elements produce a new and beneficial result, never attained before, it is evidence of invention. Loom Co. v. Higgins, 105 U. S. 580.

Valid letters-patent may be granted for an invention which consists entirely in a new combination of old ingredients, provided it appears that the new combination of the ingredients produces a new and useful result. Gill v. Wells, 89 U. S. 1.

Term of a Patent

United States mechanical, process and composition patents are granted for a period of seventeen years.

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Term of a Patent—Continued

Design patents are granted for a period of three and one-half, seven or fourteen years as the inventor may elect, and if taken out for one of the shorter periods, they cannot be extended.

The patent secures for the inventor, his heirs or assigns the sole and exclusive right to make, use and sell said invention throughout the United States for the period for which the patent has been granted, whether or not the patent is worked.¹⁵

15. An owner of a patent has the right to sell it or to keep it; to manufacture the article himself or to license others to manufacture it; to sell such article himself or to authorize others to sell it. Bement v. National Harrow Co., 186 U. S. 70.

A patentee who is the first to make an invention is entitled to his claim for all the uses and advantages which belong to it. Whether he perceived and stated all its advantages is immaterial. Stow v. Chicago, 104 U. S. 547.

The general rule is absolute freedom in the use or sale of rights under patent laws of the United States. The very object of these laws is monopoly, and the rule is, with few exceptions, that any conditions which are not in their very nature illegal with regard to this kind of property, imposed by the patentee and agreed to by the licensee for the right to manufacture or use or sell the articles, will be upheld by the courts. In re Kay-Tee Film Exch., 193 F. R. 140.

Time Necessary to Procure a Patent

It is impossible to state with certainty the time required to procure the allowance of a patent. This varies with the division in the Patent Office to which the application is referred and the number of times it is found necessary to amend and argue the case to secure all possible protection. There are forty-three of these divisions, and each one is more

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Time Necessary to Procure a Patent—

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or less in arrears with its work. However, it usually takes from one to twelve months to procure a patent.

I make it a point to be prompt with my correspondence and preparation of the requisite papers and drawings.

Each case is filed at the earliest possible moment, and as cases are taken up for examination by the Patent Office officials in the order in which they are filed in each division, there is absolutely no unnecessary delay.

Free Opinion as to Patentability

The first step for you to take is to send me a rough pencil sketch or photograph and full description of your invention, describing in detail all of its various parts and advantages. I will then advise you free of charge as to its patentability¹⁶ and just how to proceed.

16. The patent law recognizes as patentable an improvement in any art or mechanical construction or combination which is useful to the public, and not before known. To be patentable, a thing must not only be new and useful, but must amount to an invention or discovery. Although the result is produced by a mechanism which combines old mechanical elements or powers, without the use of any new element, the true question in such a case is whether the combination of elements by the patentee is new. If they have never been combined together in the manner stated in the patent, and if the combination is new and useful, not being the result of mere mechanical skill, but of invention, then it is patentable. Each and all of the separate parts of a combination may be old and well known. The combination may contain the lever, the pulley, the wheel, and other well-known and long-used devices which would not, separately, be patentable; nevertheless, if the combination is new, and produces a new and useful result, it—that is, the combination—is patentable. *May v. County of Fond du Lac*, 27 F. R., 691.

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A Model Is Not Required

It is not necessary for you to go to the expense of making a model, as it is not required, but if you have already made one, send it along.

I know of many cases where an inventor has gone to greater expense to make an unnecessary model than the entire cost of procuring a patent.

Total Cost of Procuring a Patent

After learning that your invention is patentable, the next step is to ascertain whether or not it has been previously patented, which requires a preliminary search of the United States Patent Office records.

Send me a rough pencil sketch or photograph and full description of your invention, as above stated, with draft or money order on Washington, Chicago, Philadelphia or New York for \$5, to cover the cost of same, and I will at once make a preliminary search of the United States Patent Office records and render you a report, with a copy of the patents found coming the nearest to your invention.

If it is found that your invention has not been previously patented, the \$5 paid for the search will apply on the attorney fee, hence a preliminary examination costs you nothing extra, while you are saved any further expense if your invention is found to be anticipated by some prior United States patent.

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Total Cost of Procuring a Patent—Continued

If I render a favorable report, the balance of my fee, \$20 and \$5 to cover the cost of one sheet of Patent Office drawings, making \$25 in all, must be remitted, upon receipt of which I will immediately prepare the necessary papers and forward for your approval and execution.

If you are familiar enough with the art to which your invention pertains, so that a preliminary search is unnecessary, send me the information as above called for with \$30 to cover the attorney fee and cost of one sheet of drawings and I will at once prepare the necessary papers for your approval and execution. You will thus save the *time* usually required to make a preliminary examination.

When the papers have been executed and are ready for filing, the first government fee of \$15 is due and must be remitted with the papers; thus it will be seen that the entire cost of filing a simple application requiring but one sheet of drawings, through me, is but \$45.

Your application will then be prosecuted to an early conclusion before the Primary Examiner without any additional expense, and when the patent is allowed notice will be sent you, after which time you will have six months in which to pay the final government fee of \$20. Thus it will be seen that the entire cost of a simple patent is but \$65, comprising the government fees of \$35, one sheet of Patent Office drawings \$5, and an attorney fee of \$25.

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Total Cost of Procuring a Patent—Continued

Where more than one and not over five sheets of Patent Office drawings are required to illustrate the construction, in accordance with the Patent Office rules, there will be an additional charge of \$10 for each extra sheet of drawings, \$5 to cover the cost of the drawing and \$5 attorney fee for the additional work involved in preparing and prosecuting the application to a conclusion before the Primary Examiner. Cases requiring more than five sheets of drawings become so complicated that a charge of \$15 will be made for each sheet in excess of five and not over ten, and \$20 for each sheet in excess of ten.

It greatly enhances the value of a patent to have all of its parts brought out distinctly in the Patent Office drawings and thoroughly explained and covered in the specification and claims.¹⁷

I am frequently asked by clients who have previously been in the habit of paying more than my schedule of fees how I am able to turn out such high-class work at so moderate a cost. The answer is simply this: The man who pays does not have to make good for the one who does not, nor to contribute toward the expense of maintaining a large collection department, as I carry no charge accounts.

Every dollar's service that you pay for is placed upon your case.

17. In making his claim the inventor is at liberty to choose his own form of expression, and while the courts may construe the same in view of the specifications and the state of the art, they may not add to or detract from the claim. And it is equally true that

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as the inventor is required to enumerate the elements of his claim, no one is an infringer of a combination claim unless he uses all the elements thereof. Cimotti Unhairing Co. v. American Fur Refining Co., 198 U. S. 399.

The language by which the comprehensive boundaries of a claim are to be made distinctive and clear lies wholly within the selection of the inventor. He alone may choose the words to describe and particularize his invention. When chosen and used, such words must be held to be binding upon him. Duff Mfg. Co. v. Forgie, 59 F. R. 772.

Raising Funds to Procure a Patent

If you haven't the ready money to pay for procuring a patent and have an article of merit, you can usually find some friend who is willing to pay for procuring the patent for an interest in it.

His rights may be properly protected by an assignment which should be recorded in the United States Patent Office so that the patent will issue in both names.

You can thus reap the profits from the sale of your patent and at the same time give a friend an opportunity to make some money on a small investment, while if you fail to have it patented, you will reap no benefit whatever from your invention.

Joint Inventors

Where two or more persons originate and work out an invention together, each furnishing some essential feature to make the device complete, they are joint inventors, and should apply for the patent jointly, otherwise the patent will be void.¹⁸

If one person is the inventor and another furnishes the money, they are not joint in-

Joint Inventors—Continued

ventors, and the patent must be applied for in the name of the inventor alone or it is void;¹⁹ but he should protect his associate by having an assignment properly prepared, acknowledged and recorded in the United States Patent Office so that the patent will issue in the names of both parties.

In order that I may properly protect their interests, it is very important that I should know the true position of all interested parties before preparing the application.

18. Roper, having, with Spencer, invented and constructed a machine which contains a certain useful combination, thereafter takes out a patent in his own name covering this very combination. If the prior machine produced by both men, and known to both, does not disentitle Roper to cover such combination in his patent, it would not disentitle Spencer to cover the same combination in a patent to himself; and we would have two joint inventors, each rightfully holding a separate patent for the same combination, which is absurd. (Patent held void.) Bannerman v. Sanford, 99 F. R. 294.

19. If a patent is issued to two persons as inventors, when in fact it was invented by only one, the patent is void. Royer v. Coupe, 29 F. R. 358.

It is the well-settled rule in the United States that a patent issued to two persons as joint inventors is void, even in the hands of innocent purchasers, where it is shown that in fact one of them was the sole inventor. Welsbach Light Co. v. Cosmopolitan Incandescent Gaslight Co., 100 F. R. 648.

Another thing is the point, which the appellee makes, that there was no joint invention for the subject of this patent; it being contended that the claims therein were for inventions of Sanderson solely, or, if any were not, that Ozias was the inventor; and this contention seems to us well founded. If these are the facts, the patent was not properly issued to them jointly, but each should have patented his own invention. Standard Computing Scale Co. v. Computing Scale Co., 126 F. R. 639.

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Cost of an Assignment

I will carefully prepare an assignment for you so as to protect the interests of all parties and have it properly recorded in the United States Patent Office at a total cost of \$7, including the government fee for recording.

Cost of a Contract

When entering into a contract to manufacture, place on royalty or sell your patent, you should have the papers carefully prepared in order that both parties may be properly protected, as it may save subsequent misunderstanding and expensive litigation.²⁰

I will prepare a simple contract and have it recorded in the United States Patent Office at a total cost of \$10.

Do not attempt to prepare your own contract to save a small fee, as it may ultimately cost you your patent or cause expensive litigation.

20. A patent confers on the patented only the right to exclude others from using the invention for which it is granted, and where it is owned by two or more persons the effect is merely to except each part owner from such exclusion, leaving him free to use the invention in any way he may choose for his own interest, independently of his co-owners, but subject to their equal rights. He cannot be held accountable to a co-owner for any part of the profits he may make from the manufacture and sale or use of the patented article, nor from licenses granted by him to others, since such licenses cannot convey any exclusive right, or any interest which belongs to the co-owner, but amount only to a sale by him of the whole or a part of his own interest. *Blackledge v. Weier & Craig Mfg. Co.*, 108 F. R. 71.

Note.—The above case seems to be supported by the weight of authority, but the question has never been decided by the Supreme Court of the United States, and there is much conflict in the decisions of the lower courts. (See following decision.) In my opinion, if the question is ever properly presented to the Supreme Court of the United States, the above doctrine

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Cost of a Contract—Continued

will be modified to compel an accounting to the co-owner. This conflict of authority should be borne in mind when drawing an assignment or contract relating to an interest in patents. *Joshua R. H. Potts*.

Where a patent belongs to several persons in common, each co-owner can assign his share, and sue for an infringement, and can also work the patent himself, give licenses to work it, and sue for royalties payable to him for its use, and is entitled to retain, for his own benefit, whatever profit he may derive from the working, although he may be liable to account for what he receives in respect of the licenses. *Pusey & Jones Co. v. Miller et al.*, 61 F. R. 401.

Marking Patented Articles

Every device manufactured, for which an application for a patent has been filed in the United States Patent Office, should be marked "Patent Pending" or "Patent Applied For," as preferred; and as soon as the patent has been issued, every one of the devices manufactured or sold, should be marked "Patented," giving the date and number of the patent. If they are not so marked, damages cannot be recovered for any infringement committed prior to actual notice.²¹

21. The patentee or his assignee, if he makes or sells the article patented, cannot recover damages against infringers of the patent, unless he has given notice of his right, either to the whole public by marking his article "patented," or to the particular defendants by informing them of his patent and of their infringement of it. *Dunlap v. Schofield*, 152 U. S. 244.

Purchase of Patent Rights

Before buying or entering into a contract to pay a royalty for patent rights, it is highly essential that you have an examination made to determine if the title is clear, the patent valid²² and the construction free from in-

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Purchase of Patent Rights—Continued

fringement on any prior valid patent.²³ For if the title is defective, the patent invalid, or the construction an infringement on any prior valid patent, you may not only lose your original investment, but the cost of placing the article on the market, including expensive machinery, and then find you have no defense to a suit for an injunction, accounting for profits and damages caused by the infringement.²⁴

Is it good business to take such chances?

The fee for making this examination and rendering a full and reliable written report and opinion is \$30 per day for the time actually expended on the case. A fee of \$75 on account is required with the order.

Many manufacturers and experienced inventors have such an examination made before even applying for a patent, which frequently enables them to change their construction to avoid any infringement of prior patents found to exist.

22. If, however, we are wrong, then it appears to us plain that Dolan's attorney introduced not merely the theory but the mode of applying it, for the first time, in the amended specification. . . . This being so, the amendment required an oath that Dolan might have found it difficult to take, and for want of it the patent is void. *Steward v. American Lava Co.*, 215 U. S. 161.

The amendment required an oath which had to be subscribed to by Taylor. This oath is lacking, and for want of it the patent is void. *Ney Mfg. Co. v. G. A. Swineford Co.*, 211 F. R. 469.

If the description be so vague and uncertain that no one can tell, except by independent experiments, how to construct the patented device, the patent is void. *The Incandescent Lamp Patent*, 159 U. S. 465.

Whether, if the reissue be void, the patentee may fall back on his original patent, has never yet been decided by this court, although the question was raised in *Eby v. King*, 158 U. S. 366; but as the orig-

Purchase of Patent Rights—Continued

inal patent in that case was also held to be void, it did not become necessary to express an opinion upon the question. *Allen v. Culp*, 166 U. S. 501.

The reissued patent must be for the same invention, substantially, though it be described in terms more precise and accurate than in the first patent. Under such circumstances, a new and different invention cannot be claimed. But where the specification or claim is made so vaguely as to be inoperative and invalid, yet an amendment may give to it validity, and protect the rights of the patentee against all subsequent infringements. *Battin et al. v. Taggart et al.*, 58 U. S. 74.

If the shoulder without the wire was new, so that the patent would cover that as a part of the patented invention, the defendant might lawfully control the monopoly of the shoulder only. But when the claim for that alone was rejected, and the rejection acquiesced in, it could not afterwards be successfully claimed that the patent covered that alone. The patent issued covered vessels having both the shoulder and wire, but as the inventor did not invent the wire, the act of the solicitor inserting it would seem to be unauthorized, and the patent, as to the public, void. *Milligan v. Lalance & Grosjean Manuf'g Co.*, 21 F. R. 570.

23. We have repeatedly held that a charge of infringement is sometimes made out, though the letter of the claims be avoided. The converse is equally true. *Westinghouse v. Boyden Power Brake Co.*, 170 U. S. 537.

The application of the patented device to another use, where such new application does not involve the exercise of the inventive faculty, is as much an infringement as though the new machine were an exact copy of the old. *Western Electric Co. v. LaRue*, 139 U. S. 601.

The inventor of a machine is entitled to all the uses to which it can be put, no matter whether he had conceived the idea of the use or not. *Ansonia Brass and Copper Co. v. Electrical Supply Co.*, 144 U. S. 11.

A party who subsequently discovers a new mode of carrying out a patented process, and obtains Letters Patent therefor, is not entitled to use the process without the consent of the patentee thereof. *Tilghman v. Proctor*, 102 U. S. 707.

24. Where an invention is one of a primary character, and the mechanical functions performed by the machines are, as a whole, entirely new, all subsequent machines which employ substantially the same means to accomplish the same results are infringements, although the subsequent machine may contain improvements in the separate mechanisms which go to make up the machine. *Hobbs v. Beach*, 180 U. S. 383.

If two devices do the same work in substantially the same way, and accomplish substantially the same result, they are the same, even though they differ in name, form or shape. *Union Paper-Bag Mach. Co. v. Murphy*, 97 U. S. 120.

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Purchase of Patent Rights—Continued

When the entire profit of a business or undertaking results from the use of the invention, the patentee will be entitled to recover the entire profits, if he elects that remedy. And in such a case, the defendant will not be allowed to diminish the show of profits by putting in unconscionable claims for personal services or other inequitable deductions. *Root v. Rail-way Co.*, 105 U. S. 189, citing *Rubber Company v. Good-year*, 76 U. S. 788.

Suits in equity having been begun, for the infringement of the two patents, and the circuit court having dismissed the bills, this court, in reversing the decrees after the first patent had expired, but not the second, awarded accounts of profits and damages as to both patents, and a perpetual injunction as to the second patent. *Consolidated Safety-Valve Co. v. Crosby Steam Gauge & Valve Co.*, 113 U. S. 157.

Infringements

Infringement is the unauthorized making—using—or selling of an invention covered by a valid claim of an unexpired patent—any one who violates any *one* of these three rights is just as much an infringer as though he violated *all* of them.²⁵

Damages for the infringement of any patent may be recovered by action on the case, in the name of the party interested either as patentee, assignee or grantee. And whenever in any such action a verdict is rendered for the plaintiff, the court may enter judgment thereon, for any sum above the amount found by the verdict, as the actual damages sustained, according to the circumstances of the case, not exceeding three times the amount of such verdict, together with the costs. Such a suit is brought in the United States District Courts in law; unless an injunction, or other equitable relief, is sought, in which case it is brought in equity and the infringer may be compelled to account for all profits.²⁶

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Infringements—Continued

If you believe anyone is infringing on your rights,²⁷ or if you are threatened with a suit for infringement,²⁸ you should at once have a validity and infringement search made to definitely determine your rights.

The fee for making this examination and rendering a complete and reliable written report and opinion is \$30 per day for the time actually expended on the work. A fee of \$75 on account is required with the order.

I advise such a search in every case before starting to manufacture any new device, as it is frequently possible to avoid infringement, if you know in advance just what constitutes the infringement. Buying or starting to manufacture a patented article without such an examination is like buying a lot and erecting an expensive building on it without having the title examined.

Why take such chances?

My facilities for making such examinations and conducting your case in Court, if such course is found necessary, are unexcelled.

25. It has been often repeated that a patentee has three distinctive rights,—the right to make, the right to sell, and the right to use his patented articles,—and that whoever invades any one of these rights is an infringer, and liable for damages. *Philadelphia Trust, Safe-Deposit & Insurance Co. et al. v. Edison Electric Light Co. of New York et al.*, 65 F. R. 551.

The real question is whether the inventive idea of the original patentee has been appropriated, and whether the defendants' device contains the material features of the patent in suit, even though the defendants may have supplemented and modified those features to such an extent that he may be entitled to a patent for the improvement. *Cutler-Hammer Mfg. Co. v. Union Electric Mfg. Co. et al.*, 147 F. R. 266.

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Infringements—Continued

A patentee is entitled to every use of which his invention is susceptible, whether such use be known or unknown to him. *C. & A. Potts & Co. v. Creager*, 155 U. S. 597.

Where several elements, no one of which is novel, are united in a combination which is the subject of a patent, and these several elements are thereafter united with another element into a new combination, and this new combination performs a work which the patented combination could not perform, there is no infringement. *United States v. Berdan Fire-Arms Co.*, 156 U. S. 552.

The defendant has infringed by using the pump in a driven well, constructed in a house hired by him, to obtain a supply of water for the use of his family, although he may not have paid for driving the well, or have procured it to be driven. *Beedle v. Bennett*, 122 U. S. 71.

26. There can be no doubt that he is "the party interested, either as patentee, assignee or grantee," and as such entitled to maintain an action at law to recover damages for an infringement; and it cannot have been the intention of Congress that a suit in equity against an infringer to obtain an injunction and an account of profits, in which the court is authorized to award damages, when necessary to fully compensate the plaintiff, and has the same power to treble the damages as in an action at law, should not be brought by the same person. *Waterman v. Mackenzie*, 138 U. S. 252.

The only proof we have is the defendant's profits of \$10 on each machine sold after the issue of plaintiff's patent; and, as the proof shows that defendant only sold seven machines after that date, the finding will therefore be that the court finds defendant guilty, and assesses the damages at \$70. And upon this finding, which stands in the place of the verdict of a jury, the court, under the provisions of section 4919, Rev. St., fixes plaintiff's actual damages at three times the amount found by the verdict. *Lyon v. Donaldson*, 34 F. R. 789.

Under Rev. St. Section 4921, the power of the court to increase the damages may be exercised in equity as well as at law. Statutory authority to give treble damages includes authority to multiply or increase them to any amount less than treble damages. Upon consideration of the conduct of the defendants here the damages reported, \$382.90, are doubled, making \$765.80. *National Folding-Box and Paper Co. v. Elsas et al.*, 81 F. R. 197.

It is urged by the complainants that the damages should be trebled under the power given by the statute. Rev. St. Sections 4919, 4921. But there seems to be no occasion to carry the case to that extreme. Let a decree be entered in favor of the complainants for \$43,192.36, with costs. *Pressed Prism Glass Co. v. Continuous Glass Prism Co.*, 181 F. R. 151.

The awarding of treble damages for infringement of a patent under Rev. St. Section 4921, being discretionary with the court, will not be interfered with by the appellate court unless it appears that there

Infringements—Continued

has been an abuse of discretion. *Fox et al. v. Knickerbocker Engraving Co.*, 165 F. R. 442.

But an infringer does not, by paying damages for making and using a machine in infringement of a patent, acquire any right himself to the future use of the machine. On the contrary, he may, in addition to the payment of damages for past infringement, be restrained by injunction from further use, and, when the whole machine is an infringement of the patent, be ordered to deliver it up to be destroyed. . . . No more does one, who pays damages for selling a machine in infringement of a patent, acquire for himself or his vendee any right to use that machine. *Birdsell v. Shalioi*, 112 U. S. 485.

The plaintiff must show what profit or damages are attributable to the use of the infringing design. *Dobson v. Dornan*, 118 U. S. 10.

Where the validity of a patent is a debatable question and is contested by defendant, the court will not award increased damages for infringement. *Toledo Computing Scale Co. v. Moneyweight Scale Co.*, 178 F. R. 557.

Profits are not the primary or true criterion of damages for infringement in an action at law. That rule applies eminently and mainly to cases in equity, and is based on the idea that the infringer shall be converted into a trustee, as to those profits, for the owner of the patent which he infringes; a principle which it is very difficult to apply in a trial before a jury, but quite appropriate on a reference to a master, who can examine defendant's books and papers, and examine him on oath, as well as all his clerks and employees. On the other hand, we have repeatedly held that sales of licenses of machines, or of a royalty established, constitute the primary and true criterion of damages in the action at law. *Root v. Railway Co.*, 105 U. S. 189.

A recovery does not vest the infringer with the right to continue the use, as the consequence of it may be an injunction restraining the defendant from the further use of it. *The Suffolk Co. v. Hayden*, 70 U. S. 315.

Upon applications for preliminary injunctions to restrain infringements of patent rights, the general rule is that, where the validity of the patent has been sustained by prior adjudication, and especially after arduous litigation, the only question open is that of infringement; the consideration of other defenses being postponed until final hearing, except where there is new evidence of such a conclusive character that, if it had been introduced in the former case, it would probably have led to a different conclusion, the burden of establishing which is on the defendant. *Philadelphia Trust, Safe-Deposit & Insurance Co. et al. v. Edison Electric Light Co. of New York et al.*, 65 F. R. 551.

There may be other trespasses and continuing wrongs and the vexation of many actions. These are well-recognized grounds of equity jurisdiction, especially in patent cases, and a citation of cases is

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Infringements—Continued

unnecessary. *Continental Paper Bag Co. v. Eastern Paper Bag Co.*, 210 U. S. 405.

The rule requiring that profits arising from the patented features must be separated from those arising from the unpatented features has little application in a case where every feature is patented. *Warren v. Keep*, 155 U. S. 265.

There is no doubt of the general principle that, in estimating the profits the defendant has made by the use of the plaintiff's device, where such device is a mere improvement upon what was known before, and was open to the defendant to use, the plaintiff is limited to such profits as have arisen from the use of the improvement over what the defendant might have made by the use of that or other devices without such improvements. *McCreary v. Pennsylvania Canal Co.*, 141 U. S. 459.

But since *Birdsell v. Shaliol*, 112 U. S. 485, the law has been settled that the recovery of damages from a defendant, for manufacturing and selling, will not prevent the recovery of other substantial damages from the defendants' vendees, for their profits upon reselling the patented articles. *Philadelphia Trust, Safe-Deposit & Insurance Co. et al. v. Edison Electric Light Co. of New York et al.*, 65 F. R. 551.

27. The inventor is one who has discovered something of value. It is his absolute property. He may withhold a knowledge of it from the public, and he may insist upon all the advantages and benefits which the statute promises to him who discloses to the public his invention.

If he (a patentee) sees fit, he may reserve to himself the exclusive use of the invention or discovery. If he will neither use his device nor permit others to use it, he has but suppressed his own, his title is exclusive, and so clearly within the constitutional provisions in respect to private property that he is neither bound to use his discovery himself or permit others to use it.

The previous decisions of this court are not to be construed as holding that only pioneer patents are entitled to invoke the doctrine of equivalents, but that the range of equivalents depends upon the degree of invention; and infringement of a patent not primary is therefore not averted merely because defendant's machine may be differentiated.

Where both of the lower courts find that complainant did with his machine what had never been done before and that defendant's machine infringed, this court will not disturb those findings unless they appear to be clearly wrong. *Continental Paper Bag Co. v. Eastern Paper Bag Co.*, 210 U. S. 405.

Courts of equity, it has often been said, will not assist one who has slept upon his rights, and shows no excuse for his laches in asserting them. *Lane & Bodley Co. v. Locke*, 150 U. S. 193.

In many cases where the new claims in a reissue have been held invalid, the claims repeated from the original have been sustained. *Thomson-Houston Elec. Co. v. Black River Traction Co.*, 135 F. R. 759.

Infringements—Continued

Comparative utility between machines or processes is no criterion of infringement, and the fact that a defendant's device is simpler and produces better results than that of the patent does not tend to avoid infringement unless its superiority is due to a difference in function or mode of operation or some essential change in character. *Crown Cork & Seal Co. v. Aluminum Stopper Co. et al.*, 108 F. R. 845.

The government of the United States, when it grants letters-patent for a new invention or discovery in the arts, confers upon the patentee an exclusive property in the patented invention which cannot be appropriated or used by the government itself, without just compensation. *United States v. Palmer*, 128 U. S. 262.

It is well settled that a greater degree of liberality and a wider range of equivalents are permitted where the patent is of a pioneer character than when the invention is simply an improvement. *Cimiotti Unhairing Co. v. American Fur Refining Co.*, 198 U. S. 399.

28. The improvement must not only be new and useful, but it must be one not known or used by others in this country, and not patented or described before the invention or discovery in any printed publication in this or any foreign country, and must not have been in public use or on sale for more than two years prior to the application for the patent. *Dunbar v. Myers*, 94 U. S. 187.

A patentee is estopped, as against an assignee, to claim, in a suit for an infringement, that the patent assigned is invalid. *Underwood v. Warren et al.*, 21 F. R. 573.

The statutory defences are not the only defences which may be made against a patent. Where it is evident that the Commissioner, under a misconception of the law, has exceeded his authority in granting or reissuing a patent, there is no sound principle to prevent a party sued for its infringement from availing himself of the illegality, independently of any statutory permission so to do.

In cases of patents for inventions, a valid defence not given by the statute often arises where the question is, whether the thing patented amounts to a patentable invention. This being a question of law, the courts are not bound by the decision of the commissioner. *Mahn v. Harwood*, 112 U. S. 354.

If the patent is not void for indefiniteness, we think the process was anticipated by the prior use at Joliet. *United States Mineral Wool Co. v. Manville Covering Co.*, 125 F. R. 770.

The inventor of a new and useful improvement certainly has no exclusive right to it, until he obtains a patent. This right is created by the patent, and no suit can be maintained by the inventor against anyone for using it before the patent is issued. *Gayler et al. v. Wilder*, 51 U. S. 477.

A court may properly declare a patent void on a demurrer to a bill for its infringement, when convinced from an inspection that it cannot be sustained. *Kuhn et al. v. Lock-Stub Check Co.*, 165 F. R. 445.

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Interferences

An interference is a proceeding instituted by the Patent Office officials for the purpose of determining the question of priority of invention between two or more parties claiming substantially the same patentable invention.

The proceedings and arguments in interference cases are governed by technical rules, and the services of an experienced patent lawyer are required.

My fees for conducting interference proceedings are at all times reasonable and depend upon the labor involved in each particular case.

My facilities for skillfully prosecuting interference and appeal cases are unsurpassed.

Pending or Rejected Cases

If you have a pending or rejected case in the United States Patent Office, send me a power of attorney with \$5 and I will at once make an examination of the case and report to you as to the probability of my being able to procure you a patent.

My fee for prosecuting pending or rejected applications will, in all cases, be reasonable, depending entirely upon the amount of work required, and will be agreed upon before the service is rendered.

Renewal of Forfeited Cases

When an application for a patent has been allowed and forfeited for non-payment of the final government fee within six months as

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Renewal of Forfeited Cases—Continued

required, it may be renewed any time within two years from the date of the allowance. The fee for such renewal is \$30; \$15 being the government fee and \$15 my fee. When the case is reallowed, the final government fee of \$20 may be paid any time within six months.

Appeals

An appeal may be taken from a final adverse decision of the Primary Examiner or the Examiner of Interferences to the Board of Examiners-in-Chief, consisting of three persons of competent legal knowledge and scientific ability.²⁹ The government fee for this appeal is \$10. My fee is always reasonable, depending upon the amount of work required. I never recommend such an appeal unless I honestly believe it will be successful.

An appeal may be taken from an adverse decision of the Board of Examiners-in-Chief to the Commissioner of Patents in person. The government fee for this appeal is \$20. My fee in all cases will be reasonable, depending upon the amount of work involved.

An appeal may be taken from an adverse decision of the Commissioner of Patents to the Court of Appeals of the District of Columbia. If the decision of the Court of Appeals of the District of Columbia is unfavorable, a bill in equity may be filed in the United States Court for the proper District, and an appeal taken from its decision, if adverse, to the United

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Appeals—Continued

States Court of Appeals, which is final, except in rare cases where the case may be presented to the Supreme Court of the United States.

29. The proper remedy of the patentee when a claim applied for is rejected, is an appeal. *Maha v. Harwood*, 112 U. S. 354.

Composition Patents

MEDICINAL or other compounds or compositions of matter may be patented, provided the combination of ingredients is new and useful; and, if a medicinal compound, involves more than the ordinary professional skill of a physician.

The term of the patent is seventeen years, the same as a mechanical patent.

My fee for prosecuting the application to a conclusion before the Primary Examiner is \$30; payable \$5 when the search is ordered and \$25 when the papers are ordered to be prepared. The first government fee is \$15; payable when the papers are signed and ready for filing, and the final government fee is \$20; payable any time within six months from the date of allowance of the patent.

Thus it will be seen that the total cost of a patent of this class is but \$65.

The information I require is the name of the inventor, his citizenship and address; the name and quantity of each ingredient used, how prepared and compounded, and for what purpose it is intended.

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Composition Patents—Continued

I strongly advise my clients who have medicinal or other compounds to also have their trade-marks registered in the United States Patent Office, under the new trade-mark law. For details see page 35.

Design Patents

DESIGN patents may be granted for any new, original and ornamental design for any article of manufacture.

I strongly advise that you protect by a design patent any new distinctive design or ornamentation you may adopt for carpets, wall-papers, silks, dress patterns, silk and other initials, fancy fabrics of all kinds, cut glass ornaments, decorations for dishes, statuary, medals, emblems, jewelry, picture frames, furniture and every other article of manufacture.

You are thus protected against the competition of cheap imitations, and it gives you the legal right to mark the articles "patented," which is a decided advantage.³⁰

30. The novelty of a design is to be tested, not by investigation of the means employed for its creation, but by ocular comparison of the design itself with the prior designs, which are alleged to be substantially the same.

A design will be held to be an infringement where it unquestionably produces the same effect upon the eye as that of the patented design. *Brad-dock Glass Co., Ltd. et al. v. Macbeth et al.*, 64 F. R. 118.

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Terms of Design Patents

Design patents are granted for three and one-half; seven; or fourteen years, as the applicant may elect, but cannot be extended at the expiration of the period for which the original patent was granted. The procedure is substantially the same as for mechanical patents.

Total Cost

The government fee for a three and one-half year design patent is \$10; seven years \$15; and fourteen years \$30; and must be paid when the application is filed.

My total fee for preparing the official drawings and specification, and prosecuting the application to a conclusion before the Primary Examiner is but \$30.

Thus it will be seen that the total cost of design patents is as follows:

Three and one-half years.....	\$40
Seven years	\$45
Fourteen years	\$60

Copies of Patents

A copy of any patent, in print, will be furnished for ten cents, including postage, upon receipt of the name of the inventor, date and number of the patent. If this information cannot be furnished, a search is necessary to locate the patent, for which a reasonable charge will be made.

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Foreign Patents

I HAVE direct reliable representatives in all of the principal countries and on account of the volume of business I handle am able to render the very best service in all of the foreign countries of the world, for a very reasonable fee, and earnestly solicit your patronage.

Detailed information as to the principal industries, payment of taxes, compulsory working and term for which the patent is granted in any country or group of countries, or other information, will be furnishel upon request.

Trade-Marks

Who Can Register a Trade-Mark

A TRADE-MARK may be registered by any individual, firm, association or corporation, domiciled in the United States or in any country granting similar privileges to citizens of the United States, when used in commerce with foreign nations, or among the several states, or with Indian Tribes, provided it is a proper subject for registration.³¹

31. The term trade mark means a distinctive mark of authenticity, through which the products of particular manufacturers or the vendible commodities of particular merchants may be distinguished from those of others.

As its office is to point out distinctively the origin or ownership of the articles to which it is affixed, no sign or form of words can be appropriated as a valid trade-mark, which from the fact conveyed by its primary meaning, others may employ with equal truth, and with equal right, for the same purpose. Elgin National Watch Co. v. Illinois Watch Case Co., 179 U. S. 665.

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Who Can Register a Trade-Mark—

Continued

Nor can a generic name or a name merely descriptive of an article of trade, of its qualities, ingredients, or characteristics, be employed as a trade-mark, and the exclusive use of it be entitled to legal protection. *Manufacturing Company v. Trainer*, 101 U. S. 51.

What May Be Registered

The name of an individual, firm, association or corporation may be registered if written or printed in some particular or distinctive manner, or in association with a portrait of the individual; or any mark by which the goods of the owner are distinguished from other goods of the same class, with the exception of geographical names or any insignia of the United States, any state, municipality, foreign nation, immoral or scandalous matter or marks which are descriptive of the goods upon which they are used, or the emblem of any fraternal society.

No trade-mark shall be refused registration if otherwise a proper subject for registration because of its being the name of the applicant or a portion thereof.

Under the ten-year clause of the trade-mark law, any trade-mark, regardless of its character, which was in actual and exclusive use as a trade-mark of the applicant or his predecessors from whom he derived title for ten years next preceding February 20, 1905, may be registered.³²

32. The protection extended to a mark registered under the ten-year clause of the act is not confined to the prevention of the use thereof in the precise manner employed by the registrant, but extends to any case of colorable imitation.

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What May Be Registered—Continued

The applicant, who by virtue of actual and exclusive use is entitled to register his mark under this clause, becomes on due registration the "owner" of a "trade-mark" within the meaning of the act, and he is entitled to be protected in its use as such.

Not only exact reproduction, but a "colorable imitation" is within the statute; otherwise, the trade-mark would be of little avail as by shrewd simulation it could be appropriated with impunity. *Thaddeus Davids Co. v. Cortland I. Davids et al.*, 233 U. S. 461.

The ten-year clause of the act is not discriminatory, but is based on a reasonable and sound distinction, and is constitutional. *Coca-Cola Co. v. Nashville Syrup Co.*, 200 F. R. 153.

Register Your Trade-Mark at Once

Every owner of a trade-mark should have it registered in the United States Patent Office at once, thus avoiding the possibility of some one else having it registered on the same class of goods and stopping you from using it, or necessitating an expensive cancellation proceeding or the payment of damages for infringement.

Information Required

Send me a specimen or description of the trade-mark you are using or intend using, stating the class of goods upon which used; the name of the proprietor, if an individual, his citizenship, residence and place of doing business; if a firm or association, its title, the name of each of its individual members, their citizenship, residence and place of doing business; and if an incorporated company, the state under whose laws it is incorporated, place of doing business and the name and title of the officer of the company who will execute the papers.

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Information Required—Continued

State when you first commenced its use as a trade-mark, enclosing draft or money order on Washington, Chicago, Philadelphia or New York for \$5 to cover the cost of a preliminary search of the Patent Office records to ascertain whether or not it has been previously registered as a trade-mark on a similar class of goods, and I will at once make the search and advise you of the result.

The \$5 paid for the search will be allowed to apply on the attorney fee, so that the search will have cost you nothing extra.

If my report is favorable, the balance of the fees, \$25, must be remitted with seven facsimiles or specimens of the trade-mark just as you use it on the goods, when I will at once proceed with the preparation of the application.

Total Cost

The total cost of registering a trade-mark in the United States Patent Office is \$30, comprising an attorney fee of \$20 and the government fee of \$10, which covers the cost of prosecuting the case to a conclusion before the Examiner of Trade-Marks.

Advantages of the New Law

The registration of a trade-mark in the United States Patent Office, under the new law, gives the owner a *prima facie* title to the trade-mark and gives the Federal Courts jurisdiction over all suits arising under the trade-

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Advantages of the New Law—Continued

mark laws of the United States relating to registered trade-marks, with power to grant injunctions, enter judgment for three times the actual damage caused by the infringement, in addition to all the profits to be accounted for by the defendant, and to order that all infringing marks be destroyed.

Term of Trade-Mark

The certificate of registration of a trademark remains in force for twenty years and may be renewed from time to time for a like period on application properly filed any time not more than six months prior to the expiration of the period for which the certificate of registration was issued and trade-marks are assignable with the good-will of the business in which they are used.³³

33. The owner of a trade-mark which is affixed to articles manufactured at his establishment may, in selling the latter, lawfully transfer therewith to the purchaser the right to use the trade-mark. *Kidd v. Johnson*, 100 U. S. 617.

Opposition and Cancellation

When it appears to the Examiner that the applicant is entitled to have his trade-mark registered, it will be published in the Official Gazette of the United States Patent Office.

Any person who believes that he would be damaged by the registration of such trademark, may oppose the same by filing notice of opposition in the Patent Office within thirty days after the publication of the trade-mark

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Opposition and Cancellation—Continued

sought to be registered, stating the grounds therefor.

Any owner or user of a trade-mark who believes that he has been injured by the registration of a similar trade-mark in the United States Patent Office or that the trade-mark is not in use or has been abandoned by the registrant may petition the Commissioner of Patents to cancel the registration thereof.

Opposition and cancellation proceedings are very similar and in each case are referred to the Examiner of Interferences to hear and determine the rights of the respective parties.

If the Examiner of Interferences renders an adverse decision, an appeal may be taken to the Commissioner of Patents in person and from his decision to the Court of Appeals of the District of Columbia.

The fee for filing an opposition or a petition for cancellation is \$50. The charge for conducting the subsequent proceedings is \$40 per day for the time actually expended on the case.

The Patent Office rules provide that so far as consistent the practice of the United States Courts of Equity shall be followed in these proceedings, and the services of an experienced trade-mark lawyer are essential to properly protect your rights.

I feel safe in saying that I am specially qualified to skillfully handle this class of litigation and will be glad to have you consult me at any time.

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Notice of Registration Required

The law requires all trade-mark owners to give notice of registration by printing upon the goods or packages containing the same the words "Registered in the United States Patent Office" or "Reg. U. S. Pat. Off." otherwise no suit can be maintained without first giving notice nor damages collected for infringement prior to actual notice.

Trade-Mark Infringements

The Federal Courts have jurisdiction over all suits arising under the trade-mark laws of the United States,³⁴ with power to grant injunctions,³⁵ compel the defendants to account for all profits, assess or cause to be assessed complainant's damages caused by the infringement of trade-marks, registered in the United States Patent Office; and the Court may, in its discretion, increase such damages to any amount not exceeding three times the actual damages assessed, according to the circumstances of the case, and may order all infringing labels, signs, prints, packages, wrappers and receptacles in the possession of the defendant to be delivered up and destroyed.³⁶

Before spending money to place an article on the market you should have an infringement search made to determine if your trade-mark is free from infringement on any valid registered trade-mark. The fee for this service is \$30 per day for the time actually expended on the work. A fee of \$75 is required with the order, which usually covers the cost.

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Trade-Mark Infringements—Continued

34. Federal courts have jurisdiction of all matters arising under the trade-mark statute, even though both parties be citizens of the same state. *Rossman v. Garnier*, 211 F. R. 401.

35. Where the complainant's rights are reasonably clear, a temporary injunction should be granted. The subsequent award of damages is an inadequate remedy. *Coca-Cola Co. v. Deacon Brown Bottling Co.*, 200 F. R. 105.

A defendant guilty of unfair competition may be rightfully enjoined, though at the time of hearing he has abandoned the offending label and disclaims any intent to resume its use. *H. E. Winterton Gum Co. v. Autosales Gum & Chocolate Co.*, 211 F. R. 612.

36. The test of infringement is whether the alleged infringing article is so dressed that it is likely to deceive persons of ordinary intelligence, in the exercise of the slight care ordinarily bestowed in purchasing an article, to mistake one man's goods for the goods of another. *Sterling Remedy Co. v. Eureka Chemical & Mfg. Co.*, 80 F. R. 105.

The sole basis for a suit for the infringement or imitation of a trade-mark is the sale, or probable sale, of the goods of one manufacturer for those of another; and, to entitle a complainant to relief in equity, it must appear, from a comparison of the two marks or brands used, that the similarity is such as will apparently be likely to deceive an ordinary purchaser, or it must be shown that purchasers have actually been deceived. *Kann et al. v. Diamond Steel Co. et al.*, 89 F. R. 706.

To enable the proprietor of a trade-mark to relief against an illegal appropriation, it is not necessary that the imitation should be so close as to deceive persons seeing the two marks side by side; it is sufficient if there is such a degree of resemblance that ordinary purchasers using ordinary caution are likely to be deceived.

Whether a defendant has colorably imitated a trademark consisting of a word is not to be solved merely by considering the resemblance between the words themselves; and if defendant has dressed his word in such accessories that it may be mistaken for complainant's word, that circumstance is to be considered. *Glen Cove Manuf'g Co. v. Ludeling*, 22 F. R. 823.

The complainant in a trade-mark suit is entitled to relief if the marks or brands used by the defendants sufficiently resemble the complainant's marks or brands to be mistaken for them.

An injunction should be granted if the defendants adopt their brand for the purpose of selling their goods as and for the goods of the complainant, or for the purpose of enabling others to do so, and the complainant has been injured or is likely to be injured thereby. In such case it will not be sufficient for the defendants to show that no deception is in fact practiced on those with whom they deal personally; but an injunction will be granted if consumers to whom the goods are intended to be resold are or may be deceived. *Southern White Lead Co. v. Cary et al.*, 25 F. R. 125.

Trade-Mark Infringements—Continued

Moreover, in view of this statutory right, it could not be considered necessary that the complainant in order to establish infringement should show wrongful intent in fact on the part of the defendant, or facts justifying the inference of such an intent. *Thaddeus Davids Co. v. Cortland I. Davids et al.*, 233 U. S. 461.

The addition of an infringer's name to a trademark, in place of that of the owner, does not make such use any the less an infringement. *Coca-Cola Co. v. Nashville Syrup Co.*, 200 F. R. 153.

The fact that the Siegel-Cooper Company acted innocently does not exonerate it from the charge of infringement. *Saxlehner v. Siegel-Cooper Co.*, 179 U. S. 42.

Where a party has made profits by the sale of goods in violation of the rights of another in a trademark, the owner of the trade-mark is entitled to them, whether the same profits would have been made by him or not, and not to any more if they would, for the same profit could not be made by both. *Atlantic Milling Co. v. Rowland et al.*, 27 F. R. 24.

The owner is entitled to recover of the infringer of a trade-mark the profits arising from the sale of the spurious goods, with the trade-mark impressed upon them. He is not limited to the difference between the price for which the spurious goods would sell without, and the price of the same goods with the trade-mark impressed upon them. *Benkert v. Feder et al.*, 34 F. R. 534.

Unfair Trade Competition

SUIT for unfair trade competition may be brought in the Federal Courts where there is diverse citizenship of the parties and the amount involved exceeds \$3,000; or may be joined with a suit for infringement of a technical registered trade-mark; otherwise the suit must be brought in the State Courts.

Unfair trade competition is a question of fact and each case is, in a measure, a law unto itself; the question is whether, as a matter of fact, the defendant is, by his conduct, passing off his goods as the goods of plaintiff, or his business as plaintiff's business. The

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Unfair Trade Competition—Continued

universal test question is whether the public is likely to be deceived.³⁷

My facilities for handling trade-mark and unfair trade competition causes are unexcelled and if you believe anyone is infringing on your rights, or if threatened with suit for infringement or unfair trade competition, call or write me at once, stating all the facts, and I will advise you what steps to take to protect your interests.

37. Evidence showing actual confusion of defendant's "French" garters with complainant's "Paris" garters is sufficient to justify a preliminary injunction. *A. Stein & Co. v. Liberty Garter Mfg. Co. et al.*, 198 F. R. 959.

The complainant, a British corporation, a manufacturer of tobacco products, selling to jobbers and retailers only, but entitled to do a retail business, and known in the trade throughout the world for ten years, may enjoin the use of a near imitation of its corporate name by a company, operating a chain of retail cigar stores.

Damage to complainant may result, not only from the confusion of its goods with those of defendant, but from the sale of defendant's bonds or stocks as complainant's.

A name adopted in imitation of that of an earlier corporation and false and misleading as applied to the later company is itself a badge of fraud, and an evidence of intent to compete unfairly. *British-American Tobacco Co., Ltd. v. British-American Cigar Stores Co.*, 211 F. R. 933.

An innocent imitation of the label of another becomes fraudulent, when persisted in after due notice of the imitation, and makes the wrongdoer liable to account for profits, after the expiration of a reasonable time in which to acquaint himself with the facts. *Notaseme Hosiery Co. v. Straus et al.*, 209 F. R. 495.

Proof of actual deception is not required in cases of unfair competition, where such deception appears to be the natural, and probable result of defendant's acts. *Notaseme Hosiery Co. v. Straus et al.*, 201 F. R. 99.

A descriptive term that has not acquired a secondary meaning to indicate the goods of a particular manufacturer, may be used by any one, but not so as to confuse the goods of a later user with those of an earlier user of the term.

Unfair Trade Competition—Continued

The liability to deception of the ultimate purchaser is the test of unfair competition. It is enough that the ordinary and casual buyer would be misled, and the ignorance and illiteracy of such buyers is to be considered in determining the likelihood of their deception.

In cases of unfair competition, the fraudulent intent is often inferred from the facts, sometimes against the sworn protestations of the infringer.

In strict trade-mark cases the infringer is held to account for profits accruing because of the unauthorized use of the property right; and unfair competition in trade may, under proper conditions, entitle the injured party to the same measure of relief.

It is the characteristic trade-name which strikes the attention of the would-be purchaser, and, as was shown in evidence, the name "The American Girl" was constantly confused in the minds of such purchasers with that of "American Lady." The question is whether the defendants have or have not knowingly put into the hands of the retail dealers the means of deceiving the ultimate purchaser.

In such cases the complainant will not be held to specific proof that ultimate purchasers were deceived, and limited to loss of profits thus established. Loss will be presumed. *Wolf Bros. & Co. v. Hamilton-Brown Shoe Co.*, 206 F. R. 611.

Note. The United States Circuit Court of Appeals in the above decision ordered a decree entered for \$445,311.55. Judge Smith in a separate opinion said "I fully concur in most of the opinion by Judge Van Valkenburgh, I am of the opinion, however, that Wolf Bros. & Co. is entitled to a decree for \$132,740.77 in excess of that awarded it on account of the shoes embraced in what is called class 3."—Joshua R. H. Potts.

If one person can by superior energy, by more extensive advertising, by selling a better or more attractive article, outbid another in popular favor, he has a perfect right to do so, nor is this right impaired by an open declaration of his intention to compete with the other in the market. *Brown Chemical Co. v. Meyer*, 139 U. S. 540.

One who has been guilty of unfair competition, should be required to differentiate his product from that of his competitor to a greater degree than would be required if the unfair competition had not existed and an unlawful trade had not been built up by its aid. *H. E. Winterton Gum Co. v. Autosales Gum & Chocolate Co.*, 211 F. R. 612.

Where one person has so dressed out his goods as to deceive the public into the belief that they are the goods of another person, and so put them upon the market to the manifest injury of that person and of the public, an action at law will lie for the deceit; and, to save a multiplicity of suits, and prevent irreparable injury, equity will restrain such unfair and fraudulent competition.

While a geographical name is not the subject of a trade-mark, and any one may use it, yet where it has been adopted, first, as merely indicating the place of

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Unfair Trade Competition—Continued

manufacture, and afterwards has become a well-known sign and synonym for superior excellence, persons residing at other places will not be permitted to use it as brand or label for similar goods for the purpose of appropriating the good will and business of another.

Where the question is simply one of unfair competition, it is not essential that there should be any exclusive or proprietary right in the words or labels used, as, irrespective of any question of trade-marks, rival manufacturers have no right, by imitative devices, to beguile the public into buying their wares under the impression they are buying those of their rivals. Pillsbury-Washburn Flour Mills Co., Ltd. et al. v. Eagle, 86 F. R. 608.

Labels and Prints

A LABEL is anything attached to goods describing the same, giving directions for use, etc., while a print is used for advertising purposes. Both are registerable if they possess artistic merit. They are registered under the copyright section of the constitution and must be properly marked with a copyright notice, thus "Copyright, 1914 by John Doe." The registration of each is for a term of twenty-eight years, renewable for a like period. As the cost is only \$20 including attorney and government fees you should fully protect yourself in this regard.

Information Required

I need the name of the proprietor; if an individual, his citizenship, residence and place of business; if a firm or association, its title, the name of each of its individual members, their citizenship, residence and place of doing business; if an incorporated company, the state under whose laws it is incorporated, the place

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Information Required—Continued

of doing business and the name and title of the officer of the company who will execute the papers; the exact date of publication, or the date upon which the printing was finished; and twelve labels or prints as used, with a remittance of \$20.

Copyrights

PRACTICALLY any original, intellectual production which will diffuse knowledge; impart information or please the eye or ear may be protected by copyright.

The application for copyright should be filed, accompanied by two copies of the work, immediately after the work is completed or published, with notice of copyright, thus "Copyright, 1914 by John Doe."

A copyright is granted for a term of twenty-eight years, renewable for a like period, and may be assigned. Anyone infringing or aiding or abetting the same, for profit, is guilty of a misdemeanor punishable both by fine and imprisonment, and an injunction restraining, and damages for, the infringement may also be obtained. The total cost is \$6.

Information Required

I need the name and address of the claimant, the name and nationality of the author and the title of the work. In case of all published works, give the exact date upon which the

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Information Required—Continued

work was published or the printing finished, and if a book, the name and address of the firm who set the type, did the printing and binding.

Additional Information Free

CALL or write me for any additional information relating to patents, designs, trademarks, labels, prints, copyrights, interferences, validity, infringement and title searches; or litigation of any kind, and I will gladly advise you the proper course to pursue.

How To Send Money

TO avoid delay or the possibility of loss always remit by bank draft, post office or express money order drawn on Washington, Chicago, Philadelphia or New York. If drawn on any other city add ten cents to cover the cost of exchange.

References

REFER you to the First National Bank of Chicago, The First Mortgage Guarantee & Trust Company of Philadelphia, the Chicago Association of Commerce, the Philadelphia Chamber of Commerce, any newspaper, prominent business man or banker of either of said cities and to successful clients throughout the country whose names and addresses will be furnished upon request.

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